

**Law Offices of Charles M. Tebbutt, P.C.**

**941 Lawrence Street**

**Eugene, OR 97401**

**Ph: 541-344-3505 Fax: 541-344-3516**

March 11, 2015

*CERTIFIED MAIL, RETURN RECEIPT REQUESTED*

Mr. Jim Garnatz, Farm Manager  
Hawai'i Dairy Farms, LLC  
737 Bishop Street, Ste. 2360  
Honolulu, HI 96813

Hawai'i Dairy Farms, LLC  
c/o Reg. Agent: Kyle Datta  
737 Bishop Street, Ste. 2350  
Honolulu, HI 96813

Mr. Pierre Omidyar, Founder & Director  
Uluono Initiative, LLC  
999 Bishop Street SE, Ste. 1202  
Honolulu, HI 96813

Uluono Initiative, LLC  
c/o Reg. Agent: The Corporation Company  
1136 Union Mall, Ste. 301  
Honolulu, HI 96813

Warren Haruki, President & CEO  
Arryl Kaneshiro, Land Manager  
Sharyl Lam Yuen, Land Manager  
Maha'ulepu Farm, LLC  
3-1850 Kaumualii Hwy.  
Lihue, HI 96766

Maha'ulepu Farm, LLC  
c/o Reg. Agent: Dennis M. Lombardi, Esq.  
Case Lombardi & Pettit  
737 Bishop Street, Ste. 2600  
Honolulu, HI 96813

Mr. Steve Case, Owner  
Warren Haruki, President & CEO  
Arryl Kaneshiro, Land Manager  
Sharyl Lam Yuen, Land Manager  
Grove Farm, Inc.  
3-1850 Kaumualii Hwy.  
Lihue, HI 96766-7069

Grove Farm, Inc.  
c/o Reg. Agent: Dennis M. Lombardi, Esq.  
Case Lombardi & Pettit  
737 Bishop Street, Ste. 2600  
Honolulu, HI 96813

**Regarding: Notice of Intent to Sue under §505 of the Federal Water Pollution Control Act**

Dear Hawai'i Dairy Farms, LLC, Uluono Initiative, LLC, Maha'ulepu Farm, LLC, Grove Farm, Ms. Yuen and Messrs. Garnatz, Omidyar, Haruki, and Case:

This letter is to provide each of you with notice that Friends of Maha'ulepu intends to file a citizen lawsuit against Hawai'i Dairy Farms, LLC, Uluono Initiative, LLC, Maha'ulepu Farm, LLC, and Grove Farm (hereafter, collectively, "Dischargers"). This lawsuit will be brought pursuant to Section 505(a)(1)(A) of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act" ("CWA")), 33 U.S.C. §1365(a)(1)(A). Upon the expiration of the sixty (60) day statutory waiting period, Friends of Maha'ulepu intends to file a civil action or actions against you in federal district court.

into waters of the United States without a permit. *See, e.g., Headwaters, Inc. v. Talent Irrigation Dist.*, 243 F.3d 526 (9th Cir. 2001).

EPA has delegated the administration of the NPDES permit program in Hawaii to the Department of Health. The Clean Water Branch of the Department of Health, specifically, administers the NPDES permit program for discharges of storm water associated with construction activities, and requires that persons engaged in "construction activities, including, but not limited to, clearing, grading, excavation, and construction support activities that result in the disturbance of one acre or more of total land area" to obtain coverage under a NPDES permit for their stormwater discharges. Hawaii Administrative Rules ("HAR"), Chapter 11-55, Appendix C, Section 1.1 (NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity, effective 12/6/2013). The General Permit also covers "activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale" if the larger common plan will ultimately disturb one acre or more of total land area. *Id.* In addition to coverage under the General Permit, the Dept. of Health may require any permittee to apply for an individual permit. HAR, Chapter 11-55, Appendix C, Section 2.3. Dischargers have engaged in construction activities, but have obtained no general or individual permit coverage for the stormwater discharges resulting from their construction activities; accordingly, Dischargers have violated and continue to violate the CWA as described below.

#### VIOLATIONS OF LAW

Upon information and belief, HDF began construction of new facilities sometime in 2014 to accommodate at least 699—but up to 2,000—dairy cows at the proposed dairy site. By way of example, these construction activities include the uprooting of native vegetation, application of pesticides, planting of pasture crops, creation of raceways, clearing and/or refurbishing of existing irrigation ditches, and construction of concrete cisterns and test wells in the fields. This list is not exhaustive and Dischargers have the best information on the precise dates and specific nature of the construction activities undertaken to date. Friends of Maha'ulepu has also observed that "grubbing," or the uprooting of vegetation and disturbing of the ground surface, has taken place on the proposed dairy site. "Grubbing" is considered a "disturbance of land," as that term is defined in HAR 11-55, Section 1.4. The presence of dirt roads, ditches, and construction and irrigation equipment on the proposed dairy site are also indicative that Dischargers have undertaken construction activities at the proposed dairy site.

According to public records, HDF did not apply to the Dept. of Health Clean Water Branch for coverage under the stormwater General Permit for its construction activities at the proposed dairy site until September 9, 2014—many months **after** construction activities at the proposed dairy site had begun. Upon information and belief, that September 9 application for permit coverage was not approved by the Dept. of Health. Thus, to date, Dischargers have obtained no NPDES permit coverage for their stormwater discharges at the proposed dairy site. By commencing land disturbance activities of one acre or more without a NPDES permit, or disturbing less than one acre within a larger plan of development, Dischargers have violated and continue to violate HAR, Ch. 11-55, Hawai'i Revised Statutes, Ch. 342D-50, and the Clean Water Act, Sections 301 & 402. 33 U.S.C. §§ 1311(a), 1342.

§1319(d) and 40 C.F.R. §19 and §19.4 Table 1 (or as otherwise provided by federal regulations). Civil penalties are mandatory once violations are found. 33 U.S.C. 1319(c); *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1396 (9th Cir. 1995) (civil penalties under Clean Water Act are mandatory, not discretionary).

#### PERSONS GIVING NOTICE

Friends of Maha'ulepu is a not-for-profit corporation dedicated to the protection of the natural beauty, land, and water of the Maha'ulepu Valley and Island of Kaua'i, and to the protection of the health and safety of individuals and families who reside in, work, or visit spaces in the Maha'ulepu Valley and the Island of Kaua'i. The names, addresses and phone numbers of persons and counsel giving Notice of Intent to File a Citizen Lawsuit under the Clean Water Act are as follows:

Charles M. Tebbutt  
Law Offices of Charles M. Tebbutt, P.C.  
941 Lawrence St.  
Eugene, OR 97401  
Tel: (541) 344-3505

Friends of Maha'ulepu  
P.O. Box 1654  
Koloa, HI 97656  
Tel: (808) 742-1037

*Counsel for Friends of Maha'ulepu*

*Party giving notice*

Friends of Maha'ulepu is open to resolving this matter without the need for federal litigation. Please contact us promptly if you wish to pursue such discussions.

Sincerely,



Charles M. Tebbutt  
Law Offices of Charles M. Tebbutt, P.C.

#### *CC VIA U.S. MAIL TO:*

Gina McCarthy, Administrator, U.S. Environmental Protection Agency, Mail Code:  
1101A, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460

Jared Blumenthal, Administrator, Region 9, U.S. Environmental Protection Agency, Mail  
Code: ORA-1, 75 Hawthorne St., San Francisco, CA 94105

Virginia Pressler, M.D., Director, State of Hawai'i, Department of Health, 1250  
Punchbowl Street, Honolulu, HI. 96813